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1948.

File No. Sales Tax II
48

Legal **DEPARTMENT**

R **BRANCH**

K.S.R.
I.G.I.S.

Subject:—

Rules and Notifications
in Bombay Sales
Tax

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(E)

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Std. Sectt. Slip 24 B e.

141-B

[redacted].

Legal Department File No. Sales Tax II/43

Sr. No.	D.O. No.	Subject	Pages
		Rules & Notifns. under the Bombay Sales Tax Act, 1946.	
1.	O.NO. [redacted]	Sec. 4(A) - Notification & Completion under —	1-51 (pp. 3 to 52 not typed)
2.	O.NO. [redacted]	Objections and Suggestions to the regulations raised by the President, Sales Tax Tribunal.	53-55. (pp. 56-57 not typed)
3.	F.No. [redacted]	Sec. 29 - Notifn. under	

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Union of the Islands.

Revised draft regulations are sent herewith.

2. As the Tribunal's draft contained some unnecessary matters and some matters which are beyond the power of the Tribunal to make regulations under section 4(4) of the Sea Customs Act, 1878, it has been recast. The draft regulations have been rearranged according to logical sequence. As the regulations will have to be issued by the Tribunal, it may be asked to adopt the revised draft before sanction of Government is accorded.

3. The changes are explained below :-

Against the revised draft rules the numbers of the corresponding draft rules in Finance Department draft have been shown in the margin for facility of reference.

Revised draft regulation 2.

New definitions of "application for reference", "form", "president" and "rules" have been included and the remaining revised.

It is not feasible to give the expression "legal representative" any meaning other than that assigned to it by the Code of Civil Procedure, 1908. In case of dispute the question will have to be decided by a competent court. The definition has therefore been revised. It would be preferable to omit the definition.

Draft regulations 3 & 4 in F.D. draft. In view of the provisions of rules 45(3) and 48(2) and the provision made in regulation 6(3), these regulations are unnecessary and have been omitted.

Draft regulations 6 & 7. Section 21 lays down the limitation period for filing appeals and rule 48(1) for applications for revision against an order passed in appeal. There is no provision in the Act or the Rules to relax the prescribed limitation periods. Any regulations to be made by the Tribunal must be consistent with the Act and the rules. The proposed regulations are ultra vires and have therefore been omitted.

Revised draft regulation 11 (2). This is new. It has been included to provide for the contingency when the respondent or appellant is absent at the hearing.

Draft regulations 24, 27 and 29 in F.D. draft. In the absence of specific authority in the Act, the Tribunal cannot divide itself into Benches or decide appeals and applications in the absence of any member. Draft regulations 24 and 29 have therefore been omitted and draft re-

and draft regulation 27 has been inserted as revised draft regulation 24 with suitable modification.

Revised draft regulation 26. This is also new. It has been included to enable the Tribunal to adjourn the hearing at any stage and on such terms as it thinks fit.

Revised draft regulation 29. It is presumed that certified copy of the judgment is to be supplied to the party other than Government on payment of prescribed copying fees.

Draft regulation 44 in F.L. draft. There does not appear to be any power given to either the Tribunal ofr the Registrar to administer oath. The draft regulation seems ultra vires and has therefore been omitted.

The draft Forms have been revised wherever necessary, particularly to make them applicable to applications for reference also.

I.d.P.M.L. 5-2

Remembrancer of Legal Affairs.

U.O. to F.D. No. 1268, dated the 6th February 1948.

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Legal Department.

In paragraph 2 of the note of the president of the Sales Tax Tribunal it is suggested that in the definition of the Act, after the words "Bombay Sales Tax Act, 1946, the words "as amended from time to time" should be added. This amendment is entirely unnecessary. Every Act is known by its short title and the short title of the Act in question is "the Bombay Sales Tax Act, 1946". Whenan Act is described by its short title it is obviousthat the original Act together with all the amendments made thereto are included.

2. In para. 3 of his note, the President, Sales Tax Tribunal, Suggests that the definition of the term"legal Representative" should be as suggested by him. It would satisfy the objection raised by the President if the expression"legal representative" is defined as follows:—

> "Legal representative' means a person who in law represents the estate of a deceased person and includes any person decided by the Tribunal to represent the deceased person in the proceedings pending before the Tribunal, unless and until a competent courthas decided otherwise."

3. In para, 4 the President, Sales Tax Tribunal, suggests that the word "Commissioner" should be defined as any person holding for the time being the office of the commissioner of Sales Tax or the Deputy Commissioner It appears that this proposal has not taken into consideration the fact that that the word "Commissioner" has been already defined in the Act and the Rules. In the Act the word "Commissioner" means the Commissioner of Sales Tax appointed under sub-section(1) of section 3. In the Rules, however, an extended meaning is given to the word and it includes any officer to whom the Commissioner under the provisions of section 15 delegates his powers and duties. In the Draft Regulations it is made clear that the Words and expressions used in the Regulations have the same meanings as they have in the Act and the Rules. It is not, therefore, desirable to add a thirds definition of the word "Commissioner" in the Regulations. The two definitions which are in the Act and the Rules would be sufficient for the purposes of the Tribunal.

4. Para 5 of the note of the President, Sales Tax Tribunal.- On the lines of Regulations 3 of the Tribunal's draft, a clause has been added to Regulation 6 in the revised draft as desired by the President of the Tribunal.

5. Para 6.- Draft Regulation 21 as has been suitably amended as desired

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6. Para. 7:- This refers to the suggestion of the Tribunal that it should have power to formualte benches for the purposes of hearing of appeals and applications. It would be desirable to add a Regulation after regulation 23 in the following terms:

"Benches Constitute

(1) The President shall have power to constitute benches from among the members of the Tribunal, including himself, to hear any appeal or application.

(2) Such benches shall consist of two or more members, including the President. Where a bench consists of three members, the opinion of the majority shall prevail and decision shall be in accordance with the opinion of the majority. Where a bench consists of two members and if the two members differ, the appeal or application shall be referred for hearing to the third member who was not party to the original decision. Every appeal, application for revision or application for reference shall be heard by a bench:

Provided that any interlocutory application during the hearing of such appeal or application may be heard by a single member of the bench".

7. Para. 3. The draft Regulation 29, renumbered as Regulation 30, has been suitably amended on the lines of Regulation 69 of the Income Tax Appellate Tribunal Rules.

8. Para. 9:- Under section 19A, inserted by the Bombay amending Act XXIV of 1948, the Tribunal has been given power to admit proof of facts by affidavits. They are also given power to administer oath to the deponent. It is not, therefore, necessary to provide in the Regulations that the Tribunal instead of recording deposition of witnesses require the parties to prove facts by means of affidavits. Such provision is entirely uncessassary and should not be included in the draft Regulations. The Registrar of Tribunal can be appointed by the Tribunal to administer oath. The Tribunal should pass an order to that effect. No regulation is necessary for this purpose.

Sd/-
Ld. J.R.D. 24-5

Additional Secretary to Government.

U.R. to F.D.(S.T.) NO. 4968, dated the 24th May 1948.

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18-5-56
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